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NEW LAW ON PUBLIC COMPANIES (SOCIÉTÉ ANONYME) IN GREECE

L. 4548/2018

The new law 4548/2018 seeks to reform the outdated legal framework of law 2190/1920, set nearly a century ago. The new legal regime for the Société Anonyme introduces a series of changes and innovations aiming to combat excessive bureaucracy and create a simpler and more business-friendly legal environment. To this end, the new law provides for the use of technology that facilitates the meetings and decision making of both the general assembly and the board. In addition, significant changes are made regarding the constitution and dissolution of the company, the structure and operation of the Board of Directors, decision-making by the General Assembly and the rights of the minority of shareholders.

NEW SOCIÉTÉ ANONYME FRAMEWORK

GENERAL CHANGES

ESTABLISHMENT

A private document can be used for the establishment of the SA if the Articles of Association (AoA) include only the minimum elements as described in the Law. A notarized document is still required for asset transfers and in order to adopt opt-in provisions.

The name of the company may be imaginary and may contain an email address or other indications (e.g. domain name) relating to the company.

The duration of the company can be set as indefinite, abolishing the need for a definite duration with a renewal process.

The evaluation of shareholders' contributions in kind is now carried out only by independent statutory auditors, audit firms or certified evaluation persons. The evaluation report is not anymore subject to an approval by the Administration and the interested parties have only to submit the report directly to the Business Registry ("GEMI").

The new Law introduces the right of capital contribution offset with debt (debt-equity swap) for debts owed by the company to new shareholders when the share capital is increased.

The certification of the deposit of the initial (or increased) capital has, according to the new Law (art. 20 par. 6), to be conducted by a certified auditor or auditing company, apart from small and very small companies in which, the Board of Directors retains this authority.

The new law increases the amount by which the capital can be increased by an extraordinary decision: (a) to three times instead of two when the increase is decided by the Board of Directors, and (b) eight times instead of five)when the increase is made by decision of the General Assembly. In addition, the new law abolishes the previous prohibition that an extraordinary increase could not be done in case of existing significant reserves. Finally, the new law introduces the right for the General Assembly (or even the BoD if well justified) to decide for the abolition of the preference rights of shareholders in the case of a capital increase. The relevant articles provide specific quorum and majority rules.

The threshold of the minimum capital is raised to 25,000 EUR compared to 24,000 EUR of the old law.

SHARES

The minimum nominal value of the shares is reduced from 0.30 EUR to 0.04 EUR. This allows easier reductions of share capital.

Anonymous shares are not allowed any longer. Therefore, shares should be only assigned to a named holder (this provision according to the recital, is mostly adopted for financial risks such as money laundering etc). The transition period to this regulation is set to take place by 1st January 2020.

The option for the book of shareholders to be kept by a central depository, a credit institution or an investment firm, and the option to electronically keep the book of shareholders is introduced (art. 40)

BOARD OF DIRECTORS (BoD):

First, the Law introduces the option for a **one-member BoD** in small and very small companies, which are not in stock-markets.

A **maximum number of 15 BoD Members** is introduced. Until recently, only a minimum of 3 members was stipulated.

The **percentage** of the BoD members who may be directly appointed by shareholders is increased from 1/3 to 2/5.

The Law also introduces the election or appointment of **alternate** Board Members by default, regardless of whether this possibility is provided for in the Articles of Association or not. Regarding the incomplete BoD and the appointment of the additional member, the possibility of replacement by the BoD (instead of the GA) is now available without being prescribed by the AoA.

The **duration term** of the BoD is prolonged if the GA is called but postponed or interrupted before a decision for the election of a new BoD is made.

The **Staggered Board Renewal** of the BoD Members is also introduced as an option. In this case, it is also permissible to initially stipulate different duration terms or different expiration dates for different members of the BoD(Art. 85 par. 2).

The BoD may validly make decisions without a meeting, via Minutes signed by circulation, if all members of the Board or their representatives agree to make a majority decision in the minutes. The obligation of attendance for at least 3 members is abolished.

The exemption of the BoD from any responsibility is now modified. The GA will not anymore relieve the BoD of any responsibility but –with a positive wording- the GA will approve the overall management. In this way, the BoD will remain responsible for individual acts that may have created damage to the company and the approval of the overall management will be estimated accordingly. The responsibility of the BoD member is now clarified: each member has to prove that his/her actions comply with the business judgement rules for similar conditions, and this will be also judged based on the specific duties of the member. The same responsibility is also set for non-members who have been delegated with BoD powers. There is a 3-year duration for the Company to raise claims against the BoD members. Finally, the Company can resign from claims against BoD members provided that 1/10 of minority of shareholders does not disagree (instead of 1/5).

If it is foreseen for in the AoA, the signatures of BoD Members can be replaced by an e-mail exchange.

The minutes of the BoD Meeting are signed by present members, not by the Chairman.

The minutes of the BoD and the GA can be kept in a single book, for non stock-market companies.

Fees for BoD members: Stock market companies have to adopt a policy for paid fees and to conduct a report. Non-stock market companies have also the option to introduce the same formalities as per their AoA.

GENERAL ASSEMBLY

The two consecutive meetings of the statutory General Assembly are limited to one. For the initial meeting, the quorum is set at 1/2 of the share capital and for the repetitive at 1/3 (or in some cases 1/5).

In order to participate and vote in the GA, one must have been a shareholder for at least 5 days before the GA. This condition is optional for companies who have not entered the stock market.

Not present shareholders can vote by mail.

Non-listed companies **may hold the entire GA virtually**.

One-shareholder's GA's is valid without a notary public signing the minutes.

Decisions of the General Assembly

Two new options/ways for the adoption of a decision by the GA are introduced:

1. The option to adopt decisions via **Written Resolutions**: The Board of Directors proposes a decision and the shareholders answer via email. Article 135 lays down the conditions and details of the procedure. The new decision-making process applies only to non-listed companies and only if the AoA provides for it, whereas a minority of 1/5 of the capital may oppose a decision under this procedure.

2. Minutes **signed by circulation**: The option to adopt a decision without a meeting for unanimous decisions is extended to majority decisions if all shareholders agree to collaborate. All shareholders must sign the minutes. It is expressly permitted to replace the signatures of the shareholders or their representatives, by exchanging e-mails or by other electronic means, if provided so for in the AoA.

The minutes of the GA and the BoD must be published in GEMI within 20 days from the time of the meeting.

SHAREHOLDERS' RIGHTS

1. Following a request of 1/10 (former 1/5) the BoD provides the GA with information about the course of corporate affairs and the assets of the company.

2. By request of 1/20 of the shareholders the court may allow an extraordinary GA. This decision cannot be appealed.

3. In companies with shares not in the stock-market, each shareholder has the right to request individual information by email for upcoming GAs and receive it at least 10 days before the meeting. No statutory provision is required.

4. In companies not in the stock-market, each shareholder has a Right to request Information concerning the amount of the capital of the company, the categories of shares issued and the number of shares of each category, especially the preferred ones, with the rights granted by each category, as well as any shares reserved, both by their number and by the limitations provided. The shareholder will also be entitled to know how many and what kind of shares he owns as they arise from the shareholders' book. If the above information is already posted on the company's website, it does not need to be provided, but the website should be indicated. The information shall be provided within 20 days following the request.

5. Without prejudice to the provisions on the protection of personal data and if the AoA provides for it, each shareholder may request a list of shareholders of the company, indicating the name, address and number of shares of each shareholder. The company is not required to include shareholders holding up to one cent (1%) of the capital.

6. Minority rights may also be exercised by associations of shareholders in their own name but on behalf of their members. The associations can be constituted by shareholders of one or more companies.

PROFIT DISTRIBUTION

The minimum dividend remains thirty-five percent of net profits and is in principle paid in cash. By decision of the GA received with an increased quorum and majority, this percentage may be reduced, but at a level not lower than ten percent of the profits.

2. The non-distribution of the minimum dividend is only permitted by decision of the GA, which is made by the increased quorum of Article 130 (3) and (4) and a majority of eighty percent (80%) of the capital represented in the meeting. By decision of the general meeting, which is obtained with increased quorum and majority, the profits distributed as a minimum dividend may be capitalized and distributed to all shareholders in the form of shares, calculated at their nominal value.

3. The temporary distribution of profits is decided by the BoD.

4. By order of the BoD or the GA the distribution of profits and optional reserves is allowed during the fiscal year.

DISSOLUTION AND LIQUIDATION

1. The rejection of an insolvency petition due to inadequacy of assets is introduced as a reason of dissolution.

2. By request of shareholders representing 1/10 of the capital or the liquidator, **the liquidation can be skipped** or paused and the SA is deleted from GEMI, if the assets of the company do not suffice to cover the liquidation expenses.

3. The time within which the liquidator must convene the GA and propose the acceleration and completion of the liquidation is reduced to 3 years instead of 5.

4. The liquidation is deemed complete 5 years after its commencement.

UPDATE OF ARTICLES-OF-ASSOCIATION

All SAs shall conform to obligatory changes of **new Law 4548/2018** (especially the minimum capital increase, and the remuneration policy for listed companies) and update the content of their Articles-Of-Association **until 31/12/2019**. The relative decision for the adaption of AoA can be undertaken by GA with simple quorum and majority.

Other company law compliance obligations governed by other provisions are the following:

REGISTRATION OF BENEFICIAL OWNERS

The new framework of Law 4557/2018 for the prevention and suppression of money laundering and terrorist financing, has introduced the obligation of all legal entities residing in Greece to collect and keep updated precise information about their beneficial owners in a Special Register.

A beneficial owner is a natural person who owns or controls the obliged legal person through the ownership directly (ownership of shares by a natural person) or indirectly (ownership of shares by a legal person) holding up to 25% of shares of the SA.

The information related to beneficial owners that should be comprised to the Special Register with diligence by the legal representative of the company is the following: a) name and surname, b) date of birth, c) citizenship, d) residential country, e) kind and extent of rights.

The above mentioned information, especially for SAs, shall be registered from 14th of October 2019 to 12th of December 2019.

At the same time, the Law foresees the operation of a Central Register of beneficial owners in a national level, which will be connected with the Tax Number of each legal entity as well as with Business Registry.

FINANCIAL STATEMENTS

All SA's that draft financial statements in accordance with International Financial Reporting Standards (IFRS) shall publish them both in GEMI and optionally in the official website of the company.

IN CONCLUSION

The new law entered into force on January 1st 2019. All SA's have to amend their Statutes in order to conform to obligatory changes until December 31st of 2019. Yet, all companies can harness the new possibilities provided according to their needs (e.g. staggered board renewal, one-member BoD for small companies, majority decisions signed via circulation).

Our team is ready to consult and guide you through the transition.